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GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 133/Lab./AIL/T/2017, Puducherry, dated 22nd August 2017)*

NOTIFICATION

Whereas, the Award in I.D. (L)No. 30/2013, dated 28-6-2017 of the Industrial Tribunal-*cum*-Labour Court, Puducherry in respect of the Industrial Dispute between Thiru. R. Devakumar, S/o. Radhakrishnan, Ariyur Post, Puducherry against the management of M/s. Hindustan Unilever Limited, Personal Product Factory, Vadamangalam, Puducherry over to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits, has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour), that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

A. RAJARATHINAM,
Under Secretary to Government (Labour).

BEFORE THE INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT AT PUDUCHERRY

Present : Thiru G. THANENDRAN, B.COM.,M.L., Presiding Officer.

Wednesday, the 28th day of June 2017

I.D. (L) No. 30/2013

R. Devakumar,
S/o. Radhakrishnan,
No. 2, Mariyamman Koil Street,
Ariyur and Post,
Puducherry. .. Petitioner

Versus

The Managing Director,
M/s. Hindustan Unilever Limited,
Personal Product Factory,
Vadamangalam,
Puducherry. .. Respondent.

This industrial dispute coming up before me for final hearing on 18-5-2017 in the presence of Thiru R.T. Shankar, Advocate for the petitioner and Thiruvalargal L. Sathish, T. Pravin, S. Velmurugan, V. Veeraragavan and P. Rajesh, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

1. This is a petition filed by the petitioner under section 2-(A) of the Industrial Disputes Act praying to pass an order to direct the respondent management to reinstate the petitioner with full back wages, continuity of service and all other attendance benefits.

2. The petitioner has filed a claim statement and the respondent management has filed a counter statement and in the course of enquiry on the side of the petitioner PW1 and PW2 was examined and Ex.Pl to Ex.P9 were marked and on the side of the respondent RWl was examined and Ex.Rl to Ex.R7 were marked. On perusal of records, it is found that two documents were marked as Ex.R1. The order passed in W.P.No.29409 of 2013 was marked as Ex.Rl in the cross examination of PW2 and another document, the authorization letter was marked once again as Ex.Rl which was now marked as Ex.RlA.

3. Both sides are heard. In support of his argument, the learned Counsel for the petitioner has relied upon the Judgment reported in CJD-2011-MHC-759 & CJD-2015-SC-285. On the other hand, the learned Counsel for the respondent management has filed a written argument and he has also relied upon the following Judgments : CDJ 2011 SC 622, CDJ 2009 SC 986, CDJ 2006 SC 958, CDJ 2006 SC 196, CDJ 2006 SC 982, CDJ 2007 SC 139, CDJ 2006 SC 611, CDJ 2006 SC 1238, CDJ 2005 SC 604, CDJ 2001 SC 363, CDJ 2000 SC 1888, CDJ 1992 SC 118, CDJ 2002 MHC 811, CDJ 2001 MHC 502, CDJ 2016 BHC 1370, CDJ 2015 DHC 882, 2014 III LLJ 329, CDJ 2013 DHC 1750, CDJ 2012 DHC 2073, 2009 1 LLJ 96 AP, 2009 2 LLJ 121 HP HC, CDJ 2005 DHC 999, CDJ 2001 BHC 485, India Tourism Development Corporation *Vs.* Poonam Rai (DEL), Mahesh Kumar *Vs.* M/s. Fruit and Vegetable Projects.

4. The point for consideration is that whether the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified or not and whether the petitioner is entitled for reinstatement with back wages, continuity of service and all other attendance benefits.

5. It is the case of the petitioner that he has joined as a casual labour in the respondent establishment in the year 2008 and after completion of six months, the respondent management had used to avail his service with break of the period of three months once in six months for about 5 years and he had been in service from the year 2008 to 2012 and thereafter, he has not given appointment order by the respondent management and he was issued only training order on 28-2-2012 and he had done his performance towards the job from 2008 and the respondent management cunningly acted against the petitioner and the management illegally terminated his service which is illegal one and he has been designated as trainee though he had been working at the production department as an Operator and done the perennial nature works with other permanent workers and the respondent management terminated his service without any notice and without any compensation in violation of Section 25-F of Industrial Disputes Act and his service was terminated by the respondent management at the end of the alleged training periods only with a view to deny permanent status and in the last year from 7-3-2012 to 5-3-2013 he has served for the period of 365 days with continuous employment and that therefore, he has prayed for reinstatement with full back wages, continuity of service and all other attendance benefits. In order to prove his case, the petitioner has examined himself as PW1 and he has stated all the above facts in his evidence and in support of the case the petitioner has also examined Ethirajulu, President of the Union as PW2 and he has reiterated the evidence of PWl and in support of the oral evidence of PWl and PW2 they have marked Ex.Pl to Ex.P9. The copy of the termination letter issued by the respondent to the petitioner.

6. It is the case of the respondent management that they are having 3 manufacturing units in Puducherry in which 2 are in Vadamangalam village which is manufacturing soaps, detergents, personal care products and 3rd one at Kirumambakkam Village in which they are blending and packing of tea and that the respondent factory was established in the year 1985 and 219 permanent workers, 18 officers and 3 managers are working in the unit and since, there is always fluctuation in demands for products depending on various factors and when there is a sudden spurt in demands in Indian Market, the respondent finds it extremely difficult to extract additional production from the regular workers and therefore, the respondent engaged temporary workers and the petitioner was one amongst those temporary workers on the basis of depending upon escalating production demands with a clear understanding that such engagement was only for the specific period and that therefore, the petitioner cannot make any claim for permanent employment in the respondent factory and that the petitioner was engaged as trainee after an interview on 23-3-2012 by order of appointment, dated 28-2-2012. Such training was to take effect from 7-3-2012. The petitioner had understood each and every term of his appointment which was explained to him in his local language and only after accepting such terms, he joined respondent's organisation as a trainee and that the petitioner was trying to mislead the facts before this Hon'ble Court by stating that he was a Casual workman and that the petitioner- served his training period from 7-3-2012 to 5-3-2013. His performance was reviewed periodically and assessments of his senior were also shared with petitioner. But, petitioner's performance was not satisfactory and hence, the respondent served a letter, dated 5-3-2013 informing him that he was relieved from training with effect from 6-3-2013, which was also received by him without any demur and the petitioner was therefore, only a trainee engaged for a specific period of 1 year and his training expired by efflux of time on completion of one year. Hence the claim petition filed by petitioner is devoid of merits, lacks *bona fide* and the same is liable to be dismissed.

7. The respondent management has examined one Kanessane, HR Executive of the respondent establishment as RWl and he has stated the averments of the counter in his oral evidence and has exhibited Ex.Rl to Ex.R7. The respondent management has exhibited the standing order as Ex.R2 which would evident that the apprentice trainees are engaged essentially in learning any skilled work provided that the period of such learning shall not exceed one year for those with prescribed technical qualification and three years for others and Ex.R2 further evident that the temporary workers are appointed for a limited period of work which is of an essentially temporary nature, or who is employed temporary as an additional workman in connection with temporary increases in work of a permanent nature or probationer. The copy of the pay slips of the petitioner for the month of January-2010, September-2010 and February-2011 are exhibited as Ex.R3 from which it can be noted that the petitioner Devakumar was received ₹ 3,060 as gross salary for the month of January-2010, ₹ 4,900 as gross salary for the month of September-2010 ₹ 3,760 as gross salary for the month of February-2011. Ex.R4

is the vital document which was given by the respondent management to the petitioner employee Devakumar as a letter of offer for temporary work in PP Division on 7-7-2009 and 12-4-2011. Ex.R5 is the copy of the petitioner's progress report which reveals that Shift Officers have made a remark on the petitioner that the working knowledge and the skill level of the petitioner and his involvement in work are very poor and his attendance are not good and using mobile phone non-stoppingly while working hours. The approval of the factory was exhibited as Ex.R6. The respondent management has also filed a Form 3A of the Employees Provident Fund Scheme, 1952 for the year 2007-2008, 2008-2009, 2010-2011 and 2011-2012 was exhibited as Ex.R7 in which it stated that they have paid contribution to EPF and also made payment on employment pension scheme.

8. From the pleadings and evidence of the petitioner and the respondent it is clear that the following facts are admitted by both the parties that the respondent management is doing business in manufacturing soaps, detergents, personal care products at Vadamangalam and Kirumambakkam villages and the petitioner Davakumar was working at the respondent management from the year 2008 and the respondent management has paid the contribution of EPF and employees pension scheme for the financial year 2007-2008 to 2011-2012 and the petitioner has served till 6-3-2013 at the respondent establishment and the respondent has given letter of offer for temporary employment to the petitioner on 7-7-2009 and 12-4-2011 and now the petitioner is not in the service at the respondent establishment and the petitioner employee has raised the industrial dispute before the Conciliation Officer.

9. It is the main contention of the petitioner that he was working as a casual labour from the year 2008 and he was served without any remarks for the period of 6 months and subsequently he was stopped from service on the ground of service break for the period of 3 months and after 3 months the petitioner has again joined in the employment and the respondent management had used to avail his service of the petitioner with break of 3 months once in six months for the past 5 years and only on 28-2-2012, the respondent management had issued a training order as a trainee though the petitioner has been directly working in the Production Department as an Operator doing perennial nature of work with other parmanent workers and the petitioner workman have been in service for a long period from 2008.

10. On the other hand, it is the main contention of the respondent management that the petitioner was appointed only as a temporary workman and the respondent management has solely appointed him as trainee on 28-2-2012 for the training period of one year and due to his non-performance and the petitioner's learning is found as very poor, the management has not extended the training period and hence, the respondent management has relieved him from training with effect from 6-3-2013. Therefore, it is to be decided whether the petitioner was working as a casual labour with the continuity of service not less than 240 days in a year or whether he was only appointed as a trainee and he was relieved from service for his non-performance on 6-3-2013.

11. On this aspect, the Judgments relied upon by the learned Counsel for the petitioner and the learned Counsel for the respondent are carefully considered. The learned Counsel appeared for the petitioner relied upon the following Judgments:

(i) CDJ 2011 MHC 759 - Larsen and Toubro Limited, Pondicherry *Vs.* The Presiding Officer and Others, wherein, the Hon'ble High Court has held that,

> "..... 2nd Respondet - Workmen were taken as trainees and based upon their performance appraisal, the 2nd respondent - workmen were unsuccessful and they were relieved as per the terms of the Act. According to petitioner - management, one of the important features of the contract was that the training period of two years will automatically come to an end and no pay or retrenchment compensation will be payable to the trainees. It is seen from the documents Exs.B11 to B14 in I.D. No. 59/2001 and Ex.B5 to B36 in I.D.No. 54/2001, no training measures seen to have been imparted to the 2nd respondent - workmen. But, the performance appraisal would clearly show that the 2nd respondent - workmen were doing the works of permanent nature. Based upon the materials available on record, Labour Court has rightly held that offer of training was only a device to summarily terminate the 2nd respondent - workmen without assigning any reason ..... High Court cannot interfere with the same and that the finding of the Labour Court is based upon the evidence and materials on record warranting no interference. Petitioner - Management has not made out any valid ground to set aside the Award of the Labour Court and

the Writ Petitions are liable to be dismissed. 34. In the result, these Writ Petitions are dismissed. Consequently, connected M.Ps are closed. No costs".

(ii) CDJ 2015 SC 285 - umrala Gram Panchayat *Vs.* The Secretary, Municipal Employees Union and Others, wherein, the Hon'ble Supreme Court of India has held that,

"..... Supreme Court found that they are working for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the appeilant-panchayat is erroneous and also amounts to error in law. Court directed the appellants to treat the services of the concerned workmen as permanent employees, after five years of their initial appointment as daily wage workmen till they attain the age of superannuation for the - purpose of granting terminal benefits to them.....32. The power given to the industrial and Labour Courts under section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for year, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer .....In view of the reasons stated Supra and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the appellant-Panchayat is erroneous and also amounts to error in law. Hence, the same cannot be allowed to sustain in law".

From the above citations it is clear that whenever the workman is permitted to do the work permanent in nature and he was allowed to work for more than 240 days in a calendar year from the date of his initial appointment, he has to be treated as a permanent workman. In this case, it is the contention of the petitioner that the petitioner was working continuously for about 365 days with continuous employment for the period 7-3-2012 to 5-3-2013 and that therefore, he has been treated as a permanent workman. On the other hand, the learned Counsel for the respondent management argued that the petitioner has accepted the appointment as a trainee in his employment and he was designated as a trainee with effect from 28-2-2012 to 5-3-2013 and hence, he cannot entitle for regular employment and in support of his contention the learned Counsel relied upon the Judgment reported in CDJ 2011 SC 622 - Union of India and Anr *Vs.* Arulmozhi Iniarasu, wherein, the Hon'ble Supreme Court has held that,

"When a person enters a temporary employment or get engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature.....Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contracutal or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such- a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post".

From the above observation, it is clear that the workman who has accepted the terms of the appointment and aware of the consequence of the appointment being as a trainee, cannot invoke the theory of legitimate expectation for being confirmed in the post. But, in this case admittedly the petitioner has served from the year 2008 in the same establishment as workman and admittedly he has been appointed as a casual labour in the year 2008 and he has served till 2012 with break . and subsequently he was appointed as a trainee for one year and relieved from training with effect from 6-5-2013 and the respondent management has not stated anything about the fact that why he was appointed as a trainee after five years of his service in the same establishment as workman. Further, the learned Counsel also relied upon the following Judgments :

(i) CDJ 2006 SC 958 - National Small Industries Corporation Limited *Vs.* V. Lakshminarayanan, wherein the Hon'ble Apex Court has held that,

"From the aforesaid documents it would be evident that even if the respondent had been working on a daily-wage basis prior to his appointment as Apprentice Trainee (Shop Assistant), at least from 3rd May, 1990 till 2nd May, 1992 he was working as an apprentice on a consolidated salary and the respondent himself was conscious of such fact since, he had requested the corporation and its authorities to absorb his services on a permanent basis purportedly on the basis of a promise held out at the time when he was interviewed for appointment to the post of Apprentice Trainee(Shop Assistant)."

(ii) CDJ 2016 BHC 1370 - M/s. Rohini S. Kurghode and others *Vs.* M/s. E. Merck (I) Limited and Another, wherein, the Hon'ble Bombay High Court has held that,

"The complaints are also now stopped from challenging their appointments oil the basis of the contracts entered into from time to time as the complainants by accepting such appointments have acquiesced in them and have waived their right for seeking the reliefs which they have not sought *vide* the instant complaints".

(iii) CDJ 2015 DEC 882 - Raj Kumar Rastogi *Vs.* P.O., Labour Court-X and Anr., wherein, the Hon'ble Delhi High Court has held that,

"10.....It is also apparent that his appointment as a trainee was extended from time to time on the same terms and conditions contained in his initial appointment letter and at no stage, he raised any objection to showing him as a trainee, but, continued to work with the respondent. He was very well aware of the terms and conditions of his appointment since, the copy of the appointment letter was in his possession as he had produced and proved the same before the Labour Court. If, he actually was working as a full time worker and not as a trainee, nothing precluded him from raising such objections during his tenure..... ....14. .....In the present case also, the petitioner had been appointed as a trainee. Under the terms of the contract, his training period was extended from time to time. The petitioner being a trainee is not a workman within the meaning of Section 2(s)...."

From the above citations, it is clear that whenever the employee is appointed initially as a trainee and subsequently his training period was extended from time to time then the said training cannot seek any relief as a workman. In this case while considering the whole service of the petitioner it is learnt that he was not initially appointed as a trainee and his training period was not extended from time to time but, he was initially appointed as a temporary workman and that' therefore, the above citations relied upon by the respondent management cannot be applied to this case.

12. Furthermore, on this aspect, the evidence and records are carefully perused. The evidence of RWl runs as follows :

".....மனுதாரர் எங்கள் நிறுவனத்தில் 2008-ஆம் ஆண்டு temporary-யாக வேலையில் சேர்ந்தார். 2008-லிருந்து 2012 தொடர்ச்சியாக இல்லாமல் விட்டு விட்டு மனுதாரர் எங்கள் நிறுவனத்தில் வேலை பார்த்தார். சுமார் 4 ஆண்டுகளாக மனுதாரர் எங்கள் நிறுவனத்தில் விட்டு விட்டு வேலை செய்தார். மனுதாரரின் performance நல்ல முறையில் 4 ஆண்டுகளாக இருந்ததால், அவருக்கு training order கொடுத்தோம். அவரின் மனுவின் பேரில், trainee-க்கு vacancy இருந்ததால், அவரை trainee-யாக எடுத்துக் கொண்டோம். trainee order கொடுப்பதற்கு முன்பு அவருக்கு முறையாக நேர்காணல் எடுக்கப்பட்டது. அந்த நேர்காணலின் போது, அவர் 4 ஆண்டுகள் பணி புரிந்தவர் என்று தெரியும். தற்காலிக பணியாளர்களின் performance-சை review-ன் போது நாங்கள் கணக்கில் எடுத்துக்கொள்ளவில்லை. 4 ஆண்டு காலம் மனுதாரர் செய்த பணியின் அடிப்படையில் தான் அவரை நிரந்தரம் செய்ய trainee கொடுக்க நிர்வாகம் முன் வந்தது என்றால் சரியல்ல. மனுதாரரின் performance-யை கணக்கில் எடுத்துக்கொள்ளவில்லை என்று வழக்கிற்காக பொய்யாக சொல்கிறேன் என்றால் சரியல்ல. மனுதாரருக்கு நாங்கள் கொடுத்த trainee order தான் Ex.P7, Ex.P7, 28-2-2012 அன்று கொடுக்கப்பட்டது. மனுதாரரின் trainee period close ஆகிவிட்டதுதான் Ex.P1 ஆகும். அதில் 6-3-2013 என்ற தேதி உள்ளது. Ex.P7-க்கும் Ex.P1-க்கும் இடையில் மனுதாரருக்கு எந்தவித கடிதமும் கொடுக்கவில்லை. அவருடைய performance சரியில்லை என்று இந்த இடைப்பட்ட காலத்தில் எந்தவித கடிதமும் கொடுக்கவில்லை, ஆனால் வாய்மொழியாக சொன்னோம். வாய்மொழியாக சொன்னோம் என்று பொய்யாக சொல்கிறேன் என்றால் சரியல்ல. இந்த 12 மாதத்தில் மனுதாரர் முறையாக வேலைக்கு வந்து, அவருக்கு ESI and PF பிடித்தம் செய்து கொடுத்தோம் என்றால் சரிதான். நான் நிர்வாகத்தில் HR executive-ஆக பணிபுரிகிறேன். மனுதாரரை வைத்து வேலை வாங்குவது Shift Officer ஆவார், நான் வேலை வங்கவில்லை. வேலை இடத்தில் மனுதாரரின் performance சரியில்லை என்று அவரை வேலை வாங்கிய Shift Officer மனுதாரர் பெயரில் புகார் எதுவும் இல்லை. இந்த ஒரு ஆண்டு காலத்தில், மனுதாரர் அதிக அளவில் விடுப்பு எடுத்து, ஏன் இவ்வளவு காலம் leave

போட்டீர்கள் என்று கேட்டு கடிதம் எதுவும் கொடுக்கவில்லை. மனுதாரர் பணியில் தாமதமாக வந்ததாகவும், அவர் பணி செய்யாததை குறித்து விளக்கம் எதுவும் கொடுக்கவில்லை, வேலை செய்யும் இடத்தில் சக தொழிலாளர்களை கூட்டி, விரும்பதகாத வேலைகள் செய்ததாக கடிதம் எதுவும் கொடுக்கவில்லை.....".

From the above evidence of the respondent management RW1, it is clear that this petitioner has initially joined in the respondent management as an employee in the year 2008 and he was in service till 2012 and thereafter, he has been appointed as a trainee by the respondent management for the period of one year and the petitioner has served for about 5 years and in the training period without any complaint. The above evidence would go to show that even a memo has not been issued to the petitioner that he has committed any misconduct or misbehavior in his service and particularly, so far even till the period of completion of the training he has not been given any show cause notice for any defective performance in his work to the petitioner. While so, it is clear that all on a sudden after completion of training, his employment was refused by the management telling that his performance is not satisfied. The document filed by the respondent as Ex.R7 - the annual contribution Form 3A(in the name of the petitioner, the respondent management has paid EPF contribution for the period of April - 2007 to March - 2008, April - 2008 to March - 2009, April - 2010 to March - 2011, April - 2011 to March - 2012. These facts would go to show that in the name of the petitioner, the annual contribution of EPF was paid by the respondent management for the financial year 2007 - 2008, 2008 - 2009, 2010 - 2011, 2011 - 2012.

13. Now, the case of the respondent is that the petitioner has been appointed as a trainee for the period of one year on 28-2-2012 and that therefore, he cannot be treated as workman of the respondent management. But, the respondent management is very silent to state that for the period of 2007 - 2008, 2008-2009, 2010 - 2011, 2011 - 2012 that whether the petitioner was working as a trainee or regular employee and if, he was a trainee then what prevented the respondent management to place the records before this Court to state that the petitioner was working only as a trainee for the said period. The documents Ex.P6, Ex.P8 - pay slips for the period of 2008 - 2011 and March, 2012 to February, 2013 would go to show that the respondent management has paid salary to the petitioner but, the said pay slip does not contain his designation as trainee and particularly, he has not worked as a trainee for the period of 2008 - 2012 but, in the year 2012 - 2013 pay slips of the petitioner which is exhibited as Ex.R3 would go to show that he has been paid salary as a trainee. If, any employee is appointed at the first instance in a factory he could have been appointed as a trainee to the Industry. But, in this case, he was permitted to work as a temporary workman for the period of 2007 - 2008, 2008 - 2009 and subsequently, he was in service for the period of 2010 - 2011, 2011 - 2012 and only in the year 2012 - 2013 he has been appointed as a trainee and the training order has been given to him. The petitioner as an employee of the respondent establishment, he cannot refuse to sign any such appointment order against the management while he was working for the previous past 4 years as an employee of the respondent establishment. Though he has known the above facts that he has been appointed as a trainee to keep his job he cannot insist the respondent management to avoid such appointment as the trainee of the establishment.

14. This Court finds that though the respondent management has admitted the fact that the petitioner employee was working in the establishment from the year 2008 and that they have paid EPF and other statutory contribution in the name of the petitioner from the year 2007 - 2008 as stated in Ex.R7 for the period of 2007 - 2008, 2008 - 2009, 2010 - 2011, 2011 - 2012, the respondent management does not come forward to say and establish that the petitioner was working only as a trainee for the said period. The burden is cast upon the respondent management that so far the petitioner was only working as a trainee or an apprentice for the period from 2008 about 5 years and finally he was appointed as a trainee under Ex.P7 and furthermore, it is learnt from the Ex.R4 that the petitioner was appointed only as a temporary workman on 7-7-2009 itself for the period of six months and thereafter, he was appointed as a temporary workman, from 12-4-2011 to 11-10-2011. As admittedly, the petitioner was appointed as temporary workman in the factory from 2008, it is the duty cast upon the respondent management then why the workman, who was in service in the factory as a temporary workman from 2008 for about 5 years has been appointed as a trainee in the year 2012-2013 after he has served as a temporary workman and what circumstances insisted the respondent management to appoint such workman the petitioner who has

worked as a temporary workman of the factory for about 5 years and the respondent management has failed to state whether the training has been given to him for the requirement of any technical qualification or what the work was. allotted to him for the period from 2008 - 2012 for the past 5 years to the petitioner without any training. Though the respondent management has admitted the fact that the petitioner was working for about 5 years in the factory but, the management is silent what the work was allotted to the said workman for the past 5 years and why the respondent management has decided to give such a training to the petitioner for the period 2012-2013 under Ex.P7. These above facts would create doubt that only to avoid the benefit of regular employee which is to be given by the management under the statutory laws to the petitioner and the respondent management has appointed the petitioner workman as a trainee and subsequently without any allegation in the name of deficiency in performance of the petitioner wantonly has refused employment by telling that his performance was unsatisfactory.

15. The learned Counsel appearing for the respondent management has stated that the standing order would permit them to appoint any temporary workers and they have obtained permission from the Government. It is not disputed by the petitioner that the respondent management have appointed a temporary workers and they have been permitted to avail the work from the temporary workers. But, in this case, admittedly, the petitioner was working as an employee in the establishment in the year 2008 and was in service for the past about 5 years and thereafter, he has been given appointment as a trainee for the period of one year on 28-2-2012 and subsequently, the respondent management has refused employment to the petitioner from service stating that his performance was unsatisfactory. These facts would go to show that the respondent management has given the appointment to the petitioner as a trainee and used as a device to summarily terminate the petitioner workman without assigning any reason and that therefore, as rightly pointed out by the petitioner's Counsel, it is clear that the respondent management has not established any valid ground to refuse the employment to the petitioner and that therefore, the refusal of employment to the petitioner after he has served as a workman for about 5 years and subsequently given training to him would go to show that the respondent management has offered the training to the petitioner was only a device to summarily terminate the service of the petitioner from the respondent management and that therefore, it is clear that though the petitioner was nominated as a trainee and permitted to do the work of permanent in nature and the petitioner has served through out the year from 7-3-2012 to 8-3-2013 for about 365 days continuously *i.e.*, more than 240 days in a year, the workman has to be treated as a permanent one and that therefore, he is entitled for all the benefit of the labour laws and hence, the dispute raised by the petitioner against the respondent management over his non-employment is justified and the petitioner is liable to be allowed and the petitioner is entitled for the order of reinstatement as claimed by him.

16. As this Court has decided that the industrial dispute raised by the petitioner against the respondent management over his non-employment is justified, it is to be decided whether the petitioner is entitled for backwages with continuity of service as claimed by the petitioner. In the light of the Judgment reported in U.P, State Brassware Corporation Ltd., *Vs.* Uday Narain Pandey (Supra), wherein, the Bench has observed that:

> 26. "No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.....27. The Court also reiterated the rule that the workman is required to plead and *prima facie* prove that he was not gainfully employed during the intervening period".

and that therefore, it is clear that the petitioner has to prove the fact that he has not employed gainfully during the intervening period. But, in this case, nothing is before this Court that the petitioner was not working anywhere else and that therefore, he cannot be given full backwages. However, it is not the case of the respondent that the petitioner is working anywhere else and hence considering all the above facts and circumstances and the above foregoing reasons, this Court finds that the petitioner is entitled for only part of backwages and hence, this Court tentatively fix that the petitioner is entitled only for 25% backwages.

17. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner over the non-employment is justified and an Award is passed by directing the respondent to reinstate the petitioner in service with continuity of service and further directed the respondent management to pay 25% of backwages to the petitioner from the date of non-employment till the date of reinstatement with other attendant benefits. No cost.

Dictated to the stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 28th day of June, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.

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List of petitioner's witnesses :

PW1 — 25-3-2015 — R. Devakumar

PW1 — 8-2-2016 — Ethirajulu

List of petitioner's exhibits :

Ex.Pl — 5-3-2013 — Termination letter issued by the respondent to the petitioner.

Ex.P2 — Emp. No. 250. — Copy of the New Identity Card issued by the respondent management to the petitioner.

Ex.P3 — Emp. No. 10163. — Copy of the old Identity Card issued by the respondent management to the petitioner.

Ex.P4 — I.P. No. 5518618199. — Copy of the New ESI - I.P Card issued by the ESIC to the petitioner.

Ex.P5 — 23-3-2013 — Details Various I.P. No's issued by the ESIC to the petitioner.

Ex.P6 — 2008-2011 — Pay slips issued by the respondent to the petitioner (13 Nos.).

Ex.P7 — 28-2-2012 — Alleged Training Order issued by the respondent to the petitioner.

Ex.P8 — March, 2012 to February, 2013. — Pay slips issued by the respondent to the petitioner (12 Nos.).

Ex.P9 — 27-3-2013 — Dispute raised by the petitioner before the Labour Officer, (Conciliation), Puducherry.

List of respondent's witness :

RW1 — 3-3-2016 — G. Kanessane

List of respondent's exhibits :

Ex.Rl — 28-3-2014 — Copy of order passed in W.P. No. 29409 of 2013.

Ex.R1A — 11-1-2016 — Letter of Authorization of Ms. Resma Jacob.

Ex.R2 — — — Copy of relevant portions of respondent's standing order.

Ex.R3 — January, 2010 September, 2010, February, 2011. — Office copies of pay slips of petitioner.

Ex.R4 — 7-7-2009 and 12-4-2011. — Original letters of Offer for Temporary Employment to petitioner in respondent's factory.

Ex.R5 — March to November, 2012. — Copy of petitioner's progress report (2 Nos.).

Ex.R6 — — — Self Attested copy of the Approval (Form No. 11) given by Inspector of Factories for the period of work for adult workers, permitting the respondent to engage temporary workers.

Ex.R7 — — — Self Attested copy of Annual Contribution Card (Form No. 3A) of petitioner towards EPF for the years April 2007 to March 2008, April 2008 to March 2009, April 2010 to March 2011, April 2011 to March 2012.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-*cum*-
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G. O. Rt. No. 139/AIL/Lab./T/2017*
Puducherry, dated 13th October 2017)

NOTIFICATION

Whereas, the Award in I.D. (L)No.53/2012, dated 20-7-2017 of the Labour Court, Puducherry in respect of the Industrial Dispute between the Management of M/s. Sri Kannabiran Roadways, Karaikal and Thiru P. Murugesan, Karaikal over non-settlement of service benefits has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947,) read with the Notification issued in Labour Department's G.O.Ms.No. 20/91/Lab/L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

S. MOUTTOULINGAM,
Under Secretary to Government, (Labour).

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BEFORE THE INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT AT PUDUCHERRY

(Camp Court sitting at Karaikal)

Present : Thiru G.THANENDRAN,B.COM., M.L.,
Presiding Officer,

Thursday, the 20th day of July, 2017

I.D. (L) No. 53/2012

P.Murugesan, .. Petitioner
No.5, Keezhatheru,
Sellur, Thirunallar,
Karaikal.

Versus

The Management of,
M/s. Kannabiran Roadways,
Karaikal. .. Respondent

This industrial dispute coming on 23-2-2017 before me for hearing, Thiru A.Thirumal Valavan, Counsel for the petitioner and Thiru A. Veerapandian, Counsel for the respondent management, both remained absent and no representation having been made on their behalf, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

AWARD

1. This Industrial Dispute has been referred as per the G. O. Rt. No. ll/AIL/LAB/J/2011, dated 25-1-2011 for adjudicating the following:-

(a) Whether the dispute raised by Thiru P. Murugesan against the management of M/s. Kannabiran Roadways, Karaikal, over non-settlement of service benefits is justified or not?

(b) If justified, what relief the petitioner is entitled to?

(c) To compute the relief if any, awarded in terms of money if, it can be so computed?

The above reference originally taken on file by the District Court at Karaikal which was being functioned as Labour Court in ID.No. 1/2011 and subsequently when this Industrial Tribunal-*cum*-Labour Court established in the year 2012, the case has been transferred to this Court and this case was taken on file by renumbering it in I.D (L). No. 53/2012.

2. The brief averments of the Claim Statement filed by the petitioner are as follows:-

The petitioner stated that he was working regularly as "Bus Conductor" with the respondent management on all week days from 1996 to 2005 and he was not brought under the Labour beneficial Acts such as P.F. Act, E.S.I. Act and other Insurance benefits and he was not given weekly holidays, festival holidays overtime work wages, festival bonus and other welfare benefits provided under the Labour Acts and while he requested the respondent management to raise his wages and to provide all other benefits provided under the various Labour Acts, without giving any prior notice and valid reasons he was terminated from the service and thereafter, he had approached the respondent's management with a request to pay all the benefits to him for rendering service for the period of ten years in the respondent's Transport but, he had received no positive response from the respondent and then the petitioner had approached the Conciliation Officer, Karaikal with a petition by requesting the Labour Officer to enquire into the matter and to get all the benefits from the respondent's transport for the services rendered by him and in the conciliation proceedings, the respondent stated that the petitioner had not been terminated from the service and he was left the job without intimation and he had not performed his duty in a rightful manner and hence, the conciliation was failed.

The petitioner further stated that though the petitioner is entitled for reinstatement with back wages he had requested only for the benefits available to him under various enactments which are in force for the service he had rendered with the respondent for ten years and further stated that he is eligible to get 8.33% bonus and further stated that he was not terminated on the allegation of misconduct and his removal from the employment was not based on the punishment by way of disciplinary action and he has not committed mistakes while he was doing his bus Conductor work and therefore, he is very well entitled to claim all the benefits entitled to a labour such as PF, EPF and other benefits.

3. The brief averments of the counter statement filed by the respondent are as follows:-

The respondent stated that this Court has no jurisdiction to claim any gratuity under the provisions of the Payment of Gratuity Act, 1972 by way of an industrial dispute under the provisions of the Industrial Disputes Act before a Labour Court and if, at all the claim for gratuity was entitled, it should have been applied in the prescribed Form "I" u/s 8 of the Act before the Controlling Authority under rule 19 of the Payment of Gratuity (Central) Rules, 1972 and not before a Labour Court, vide reported judgment in the State of Punjab *Vs.* Labour Court, Jullander & others [55 FJR 468. 1981 (I) LLJ 354] and therefore, this Court lacks jurisdiction to entertain the claim of the alleged gratuity.

The respondent further stated that the petitioner was not employed as regular worker, but, worked as acting worker in the event of leave vacancy usually given not more than 5 to 6 days in a month. Therefore, the petitioner left the job voluntarily and he has no continuous service and the claim itself is less than 10 years as the establishment itself came to be owned by 1995 only and the petitioner refused to come to work when the job was offered to him by his employer including before the Conciliation Officer, Karaikal and before this Court, the requirement or qualification to claim bonus and gratuity does not exists. Hence, the claim of gratuity does not arise. If, the Controlling Officer refused to order gratuity, an appeal under rule 19 of the Central Payment of Gratuity Rules, 1972 alone was permissible and not a proceeding under the Industrial Disputes Act before a Labour Court. Provident funds, ESI are not applicable to the petitioner as he was not in continuous service and no claims on the above grounds are sustainable. No relief can be prayed as there was no coverage of ESI and provident fund. If, they are entitled, the tribunals set up for the specific purpose under the said Acts alone can be claimed before the competent authority set up under the respective Act and not under the Industrial Disputes Act and before a Labour Court. The claim of weakly holidays, over time salary, festival holidays, OT wages, festival bonus and other benefits are not entitled by the petitioner as he has performed it, not in continuous service, duty time salary was paid as and when due, and even if they are allegedly due, they are not under any contract and they are barred by limitation.

The petitioner is not the employee/worker in continuous service and not entitled to anything. The claim of benefits after voluntarily stopping to come to service, not entitled to anything when the claims are levied after 5 years. This shows lack of *bona fides,* latches and bar of limitation. Even during the leave duty/acting duty time also, he has not performed his duties perfectly and there were repeated complaints of negligence and caused loss to the respondent and they are accepted by the letters of the petitioner. While he was refusing to work when the job was offered to him without any valid reason, all the claims of the petitioner were liable to be rejected.

4. In the course of the enquiry on the side of the petitioner PWl was examined and no documents were exhibited and on the side of the respondent no oral evidence was let in and no documents were exhibited.

5. *The point for consideration is:*

Whether the dispute raised by the petitioner against the respondent management over non-settlement of service benefits is justified or not and whether the petitioner is entitled to claim any relief?

6. In this case, after the examination of the PW1 in the enquiry he was fully cross-examined by the respondent management and subsequently the respondent management has not produced any witness on their side even after granting number of opportunities and hence this Court has closed the evidence of the respondent side and posted the case for arguments even after giving sufficient opportunities both the parties have not appeared before this Court to put-forth their arguments and that therefore this Court has closed the arguments and posted the case for orders with a liberty to file written argument if any, but, even then no argument was filed by either side.

7. This industrial dispute is raised by the petitioner over the non-settlement of service benefits to the petitioner by the respondent management. It is the evidence of PW1 that the petitioner-was working as a bus Conductor in the respondent transport for the period from 1996 to 2005 and no benefit of the Labour Laws was given to the petitioner by the respondent management and he has not given weekly holidays, festival holiday's overtime work wages, festival bonus and other benefits provided under the various Labour Laws and since, the petitioner has requested the respondent management to raise his wages and to provide all other legal benefits provided under the various Labour Laws, without any valid reason or prior notice the petitioner was terminated from the service.

8. In support of his oral evidence, the petitioner has not at all exhibited any documents. On the other hand, the respondent management has contended in the counter statement that the petitioner was not the regular employee of the respondent establishment and he was worked as a acting worker in the event of leave vacancy usually given not more than 5 or 6 days in a month and the petitioner has voluntarily left the job and he has no continuous service at any time and further that this Court has no jurisdiction to pass any order under the Payment of Gratuity Act and no relief can be given under the Industrial Disputes Act for getting any gratuity and P.F., E.S.I, are not applicable to the petitioner as he is not in continuous service at the respondent establishment and that therefore, the petitioner is not the employee in continuous service and hence he is not entitled for benefits of the Act.

9. Though the petitioner has stated that he was working as bus Conductor in the respondent establishment for the period from 1996, he has not at all filed any documents to establish that he had been in continuous service till 2005. Since, no documents were exhibited while the respondent has contended that the petitioner employee is not a regular workman and he was only acting worker in the event of leave vacancy usually given work not more than 5 or 6 days in a month. In such circumstances, no such pay slips or ID card given by the respondent establishment or payment of contributions of E.S.I, and P.F. have not been exhibited and filed before this Court. As a petitioner he has to establish the *prima-facie* case that he was working in the respondent establishment as a regular worker from the year 1996 and was working till 2005 by exhibiting the documents but in this case the petitioner though examined himself as PWl no document was exhibited on his side.

10. Further more, the petitioner PW1 admits that he has not filed any documents to prove the fact that he had been in continuous service at the respondent establishment. The evidence of the petitioner PWl runs as follows;

"வேலையை விட்டு நின்றபிறகு எனக்கு வேலை வேண்டும் என்று நான் கோரி எந்த நடவடிக்கையும் எடுக்கவில்லை. வேலை செய்யவும் நான் இப்போது தயாராக இல்லை. நான் விடுப்பு எடுப்பதற்கு முன்பு நான் செய்த வேலையில் குறைபாடு இருப்பதாக மெமோ கொடுத்தார்கள். நிர்வாகம் அளித்த மெமோ தேதிகளில் அவ்வப்போது நான் விளக்கம் கொடுத்துள்ளேன். இனி அந்த தவறுகள் நடக்காது என்று நான் விளக்கம் கொடுத்துள்ளேன். மெமோ கொடுக்கப்பட்டு அதற்கு நான் பதில் தந்த பிறகு சுமார் 3 மாதங்கள் கழித்து 15 நாட்கள் விடுப்பு எடுத்தேன். குறைபாடுகள் என் மீது உள்ளதால்தான் நான் வேலையை விட்டு நின்றுவிட்டேன் என்றால் சரியல்ல. தொடர்ச்சியாக 10 வருட காலமாக எதிர் மனுதாரரிடம் பணிபுரிந்தேன் என்பதற்கு என்னிடம் ஆவணங்கள் இல்லை. நான் தொடர்ந்து பணி செய்யவில்லை என்றும் யாராவது பணியாளர்கள் விடுப்பு எடுத்தால் அந்த காலி இடத்தில் மட்டுமே நான் வேலை செய்வது வழக்கம் என்றால் சரியில்லை. பணிக்கொடை மற்றும் வேறு எந்த தொகையும் பிடிப்பது கிடையாது. பி. எப். மற்றும் போனஸ் ஆகியவற்றை நான் கேட்கிறேன். பி. எப். தொகை நிர்வாகம் கட்டினார்களா என்று எனக்குத் தெரியாது// 10 வருடத்துகுரிய போனஸ் தொகை வரவேண்டும். குத்துமதிப்பாகத்தான் இதுவரை கொடுத்திருப்பார்கள். முழமையாக போனஸ் தரப்படவில்லை. போனஸ் என்பது நிர்ணயம் இல்லை, உண்டு ஆனால் கொடுக்கப்பதில்லை வாங்கிய சம்பளத்திற்கு நான் மெனக்கிட்டு அந்த சதவீதப்படி போனஸ் தரப்படவில்லை போனஸ் தொகையில் பாக்கி உள்ளதாக இதுவரை கடிதம் எதுவும் எழுதி கேட்கவில்லை 10 வருடமாக போனஸ் வாங்கியதில் குறை இருப்பதாக நான் எந்த அதிகாரியிடமும் புகார் கூறவில்லை. ஒவ்வொரு வருடமும் அவர்கள் கொடுத்த தொகையை போனசாக வாங்கியுள்ளேன். 10 வருடமாக வாங்கியுள்ளேன்."

From the above evidence it is clear that the petitioner has admitted the fact that he has not exhibited any documents to prove the fact that he was in continuous service at the respondent establishment and further he admits that he has voluntarily left his employment from the respondent establishment and he has not asked the respondent establishment to give any job to him.

11. Further more, the petitioner has not at all exhibited any documents to prove the fact that he had been in service from the year 1996 while it is stated by the respondent management that the respondent

establishment itself is started only in the year 1995 and therefore, the petitioner has failed to establish the fact that he was working as permanent employee in the respondent establishment as bus Conductor from the year 1996 as stated by him.

12. Further more, though the petitioner has filed the claim statement, he has not at all stated the particulars of the due which is to be recovered from the respondent management in the name of P.F., E.S.I., insurance and other benefits while he admits in his evidence that he has received bonus for every year from the respondent management but, the particulars of the amount how much he has been received the bonus for every year and how much is given to him arrear of bonus has not at all stated by the petitioner and that therefore, the petitioner has utterly failed to prove his case by filing all the documentary evidence like pay slip, E.S.I, or ID card or any other communication between the respondent and the petitioner workman or any other document to prove the fact that he is a permanent employee of the respondent establishment and that therefore, the dispute raised by the petitioner before the Conciliation Officer over non-settlement of dues is not justified and as such the petitioner is not entitled for any relief as claimed by him and hence, the claim petition is liable to be dismissed,

13. In the result, the petition is dismissed. No cost.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 20th day of July, 2017.

G. THANENDRAN,
Presiding Officer
Industrial Tribunal-*cum*-Labour Court
Puducherry.

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List of petitioner's witness:

PW. 1—21-11-2012 - Murugesan

List of petitioner's exhibits: Nil

List of respondent's witnesses: Nil

List of respondent's exhibits: Nil

G. THANENDRAN,
Presiding Officer
Industrial Tribunal-*cum*-Labour Court
Puducherry.

புதுச்சேரி அரசு

இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை

[அரசு ஆணை பலவகை எண் 23/இசநி /கோ.2/2017, புதுச்சேரி, நாள் 2017 (வரு) செப்டம்பர் மீ 7 வ)

ஆணை

புதுச்சேரி மாநிலம், காரைக்கால் வட்டாரம், நிரவி கொம்யூன், விழிதியூர், அருள்மிகு திரௌபதியம்மன் தேவஸ்தானத்திற்கு, அரசு ஆணை பலவகை எண் 10/இசநி/கோ.2/2009, நாள் 27-8-2009-ன் மூலம் நியமிக்கப்பட்ட திரு. தி. அனந்தநாராயணன், த/பெ. திருமுடி (Assistant Line Inspector, Electricity Department, Neravy, Karaikal) அவர்களால் சிறப்பு அதிகாரி என்கிற நிலையில் நிர்வகிக்கப்பட்டு வருகிறது.

2. மேலும் ஆலயத்தை செம்மையாக நிர்வகிக்கும் பொருட்டு இச்சிறப்பு அதிகாரிக்கு பதிலாக, ஒரு அறங்காவலர் வாரியம் அமைத்து நிருவகிப்பது இன்றியமையாதது என்று அரசால் கருதப்படுகிறது. .

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் 4(1)-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, புதுச்சேரி மாநிலம், காரைக்கால் வட்டாரம், நிரவி கொம்யூன், விழிதியூர், அருள்மிகு திரௌபதியம்மன் தேவஸ்தானத்திற்கு, பின்வரும் ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது:-

திருவாளர்கள் :

(1) கோ. ஜெயபால், . . தலைவர்
த/பெ. கோதண்டபாணி,
எண் 23, மாரியம்மன் கோயில் வீதி,
விழிதியூர், காரைக்கால்.

(2) சோ. சிவானந்தம், . . துணைத் தலைவர்.
த/பெ. சோமசுந்தரம்,
எண். 28, சங்கரன் தோப்பு,
பேட்டை ரோடு,
விழிதியூர், காரைக்கால்.

(3) வா. பாஸ்கரன், . . செயலாளர்
த/பெ. வாசுமணி,
எண் 41, மெயின் ரோடு,
விழிதியூர், காரைக்கால்.

(4) வே. பக்கிரிசாமி, . . பொருளாளர்
த/பெ. வேதநாயகம்,
எண் 14, முதலியார் தெரு,
விழிதியூர், காரைக்கால்.

(5) சீ. ஆசைதம்பி, . . உறுப்பினர்
த/பெ. சீனுவாசன்,
எண் 15, தெற்கு வீதி,
விழிதியூர், காரைக்கால்.